REMARKS

Claims 1, 4-13, 15, 18-26, 30 and 31 are pending in the application.

Claims 1, 4-13, 15, 18-26, 30 and 31 have been rejected.

Rejection of Claims Under 35 U.S.C. § 103

Rejection of Claims 1, 15, 30 and 31

Claims 1, 15, 30 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2005/0108302 filed by Rand et al. ("Rand") in view of U.S. Patent 6,643,671 issued to Milillo et al. ("Milillo"). *See* Office Action, pp. 2-9. Applicants traverse this rejection.

Regarding independent claims 1 and 15, the Office Action cites the following portion of ¶ [0030] of Rand to show that Rand teaches "refreshing the second data volume to the data contents of the first data volume that existed at time T":

> Additionally, the data in backup data volume 122 can be stored in data blocks in data elements, where a map within a data element stores the association of a data block within the data element to a stamp that indicates when the data in the data block was written. Thus, the maps in data elements can be used to generate the image of primary data volume 112 at a specified point-in-time.

See Office Action, pp. 3 and 5. Thus, the Office Action equates Rand's backup data volume 122 with the second data volume of claims 1 and 15, and the Office Action equates Rand's primary data volume 112 with the first data volume of claims 1 and 15. This conclusion is supported by other citations offered to support other limitations of claims 1 and 15. *See* Office Action, pp. 3-6.

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Despite equating Rand's primary data volume 112 with the first data volume of claims 1 and 15, the Office Action argues that Rand teaches the limitation of claims 1 and 15 which requires "modifying data of the first data volume while the second data volume is being refreshed to the data contents of the first data volume that existed at time T" by citing the following portions of ¶¶ [0006], [0032], and [0035] of Rand:

> Additionally, while the primary data volume is being restored, read/write requests to the primary data volume are satisfied using the generated image of the primary data volume. (Rand, ¶ [0006]).

> In step 506 (FIG. 5), while the primary data volume 112 is being restored, read and write requests for data in primary data volume 112 that have not been restored are satisfied using the generated image of primary data volume 112. For example, if host system 102 issues a read request for data that has not yet been restored to primary data volume 112, then the read request is satisfied by using the generated image of primary data volume 112. (Rand, ¶ [0032].)

> In step 602, a determination is made as to whether the data storage drive having the primary data volume is active. If the data storage device is not active, then in step 604, the read/write requests to the primary data volume are satisfied using the generated image of the primary data volume." (Rand, ¶ [0035].)

But in order for these portions of Rand to teach "modifying data of the first data volume" the Office Action would need to equate Rand's generated image of primary data volume 112 with the first data volume of claims 1 and 15. However, since Rand's generate image of primary data volume 112 is not Rand's primary data volume 112 (an image of a volume is not that volume), and since the Office Action has already equated the first data volume of claims 1 and 15 with the primary data volume 112, the Office Action cannot consistently equate Rand's generated image of primary data volume 112 with the first data volume of claims 1 and 15.

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Thus, for at least the reason that the Office Action's assignment of entities in Rand to the entities of independent claims 1 and 15 is self-contradictory, and the fact that claims 30 and 31 are dependent upon claims 1 and 15, respectively, the Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Rejection of Claims 4-5, 8-12, 18-19, and 22-25

Claims 4-5, 8-12, 18-19, and 22-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rand et al in view of Milillo et al. as applied to claims 1, 15, 31, and 32, and in view of Veritas article entitled, "Veritas Flashsnap Point-In-Tine Copy Solutions," dated June 24, 2002. ("Veritas article"). *See* Office Action, pp. 9-19. Applicants traverse this rejection for at least the reason that these claims are dependent upon allowable base claims 1 and 15.

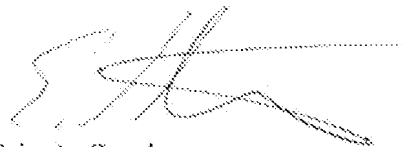Rejection of Claims 6, 13, 20, and 26

Claims 6, 13, 20, 21, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rand et al. in view of Milillo et al. as applied to claims 1, 15, 31, and 32, and in view of U.S. Paent No. 6, 691,245 issued to DeKoning ("DeKoning"). *See* Office Action, pp. 19-23. Applicants traverse this rejection for at least the reason that these claims are dependent upon allowable base claims 1 and 15.

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CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5093.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

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